

WILLIAM J. FAIRSE
GLENN FAIRSE

IBLA 84-316

Decided July 2, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the claim. CA MC 72986.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Failure to file an instrument required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 in the proper BLM office within the time prescribed constitutes abandonment of the mining claim.

APPEARANCES: Mrs. B. J. Fairse, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

This is an appeal from the January 25, 1984, decision of the California State Office, Bureau of Land Management (BLM), declaring the Little California lode mining claim, CA MC 72986, abandoned and void for failure to file an affidavit of assessment work or a notice of intention to hold the claim for the 1982 filing year as required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2. The failure to file one of these documents constitutes abandonment of the claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 105 S. Ct. 1785 (1985). The claim was located on August 14, 1980, by William J. Fairse and Glen Fairse, appellants, and duly recorded with BLM.

Appellants' statement of reasons is submitted by Mrs. B. J. Fairse, who states she mailed the 1982 "assessment paper" to BLM on October 28, 1982. She states in addition to four named persons who witnessed her mailing the affidavit of assessment work on that date, she has a 1982 calendar "with the dates on it." Mrs. Fairse states she knows it was mailed, but "whether it was lost in transit or in the BLM office I couldn't say."

[1] The owner of an unpatented mining claim located on Federal lands must file on or before December 30 of each year following the calendar year in which such a claim was located either evidence of annual assessment work performed or a notice of intention to hold the claim. 43 CFR 3833.2-1(b)(1). "File" means being received and date stamped by the proper office of BLM. 43 CFR 3833.0-5(m). Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). BLM did not receive a proof of labor or a notice of intention to hold the claim for 1982. Because appellants failed to file the required document for 1982, BLM properly declared the claim void. 43 CFR 3833.4(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge

